

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 904**

**Introduced by Assembly Member Houston**

February 18, 2005

---

An act to *amend Sections 510, 513, 514, and 515 of, and to add Section 511.5 to, the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 904, as amended, Houston. Employment: workweek.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by 2/3 of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

~~This bill would exempt individual employees from the alternative workweek and would permit each employee to, with the consent of his or her employer, adopt an alternative workweek schedule providing for workdays up to 12 hours within a 40-hour workweek, so long as the employee is guaranteed a base salary.~~

*This bill would authorize affected employees, as defined, of an employer that continuously operates a manufacturing facility 24 hours a day for 7 days a week, to adopt by a 2/3 vote an alternative workweek schedule providing for workdays up to 12 hours within a 40-hour workweek without the payment to affected employees of an overtime rate of compensation. The bill would also make conforming changes to other existing laws relating to overtime pay.*

*By imposing additional requirements on employers the violation of which would be a misdemeanor under existing law, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 511.5 is added to the Labor Code, to~~  
2     ~~read:~~

3     SECTION 1. Section 510 of the Labor Code is amended to  
4     read:

5     510. (a) Eight hours of labor constitutes a day's work. Any  
6     work in excess of eight hours in one workday and any work in  
7     excess of 40 hours in any one workweek and the first eight hours  
8     worked on the seventh day of work in any one workweek shall be  
9     compensated at the rate of no less than one and one-half times  
10    the regular rate of pay for an employee. Any work in excess of  
11    12 hours in one day shall be compensated at the rate of no less  
12    than twice the regular rate of pay for an employee. In addition,  
13    any work in excess of eight hours on any seventh day of a  
14    workweek shall be compensated at the rate of no less than twice  
15    the regular rate of pay of an employee. Nothing in this section  
16    requires an employer to combine more than one rate of overtime  
17    compensation in order to calculate the amount to be paid to an  
18    employee for any hour of overtime work. The requirements of  
19    this section do not apply to the payment of overtime  
20    compensation to an employee working pursuant to any of the  
21    following:

22    (1) An alternative workweek schedule adopted pursuant to  
23    Section 511 or 511.5.

24    (2) An alternative workweek schedule adopted pursuant to a  
25    collective bargaining agreement pursuant to Section 514.

1 (3) An alternative workweek schedule to which this chapter is  
2 inapplicable pursuant to Section 554.

3 (b) Time spent commuting to and from the first place at which  
4 an employee's presence is required by the employer shall not be  
5 considered to be a part of a day's work, when the employee  
6 commutes in a vehicle that is owned, leased, or subsidized by the  
7 employer and is used for the purpose of ridesharing, as defined in  
8 Section 522 of the Vehicle Code.

9 (c) This section does not affect, change, or limit an employer's  
10 liability under the workers' compensation law.

11 *SEC. 2. Section 511.5 is added to the Labor Code, to read:*

12 *511.5. (a) Notwithstanding Section 511, upon the written*  
13 *proposal of an employer, the employees of an employer that*  
14 *continuously operates a manufacturing facility 24 hours a day*  
15 *for seven days a week may adopt a regularly scheduled*  
16 *alternative workweek that authorizes work by the affected*  
17 *employees for no longer than 12 hours per day within a 40-hour*  
18 *workweek without the payment to the affected employees of an*  
19 *overtime rate of compensation.*

20 *(b) (1) A proposal to adopt an alternative workweek schedule*  
21 *shall be deemed adopted only if it receives approval in a secret*  
22 *ballot election by at least two-thirds of affected employees in a*  
23 *work unit.*

24 *(2) Prior to the secret ballot election, an employer that*  
25 *proposes to adopt an alternative workweek schedule shall*  
26 *disclose in writing to the affected employees the effects of the*  
27 *proposed alternative workweek schedule on the affected*  
28 *employees' wages, hours, and benefits. The disclosure shall*  
29 *include notice that one or more meetings will be held at least 14*  
30 *days prior to the election for the specific purpose of discussing*  
31 *the effects of the alternative workweek schedule on the affected*  
32 *employees. Failure to comply with this paragraph shall render*  
33 *the election null and void.*

34 *(c) (1) An affected employee working longer than 12 hours in*  
35 *a workday pursuant to an alternative workweek schedule*  
36 *adopted pursuant to this section shall be paid an overtime rate of*  
37 *compensation of no less than double the regular rate of pay of*  
38 *the employee for any work in excess of 12 hours in a workday.*

39 *(2) An affected employee working longer than 40 hours in a*  
40 *workweek shall be paid an overtime rate of compensation of no*

1 less than one and one-half times the regular rate of pay of the  
2 employee for any work in excess of 40 hours in the workweek.

3 (3) Nothing in this section requires an employer to combine  
4 more than one rate of overtime compensation in order to  
5 calculate the amount to be paid to an employee for any hour of  
6 overtime work.

7 (d) The standards for the payment of overtime compensation  
8 established by this section shall apply to employees who are  
9 temporarily assigned to a work unit covered by this section.

10 (e) (1) An employer shall not be required to offer an  
11 alternative work assignment to an employee if an alternative  
12 assignment is not available or if the employee was hired after the  
13 adoption of the alternative workweek schedule.

14 (2) An employer that adopts an alternative workweek schedule  
15 pursuant to this section shall make a reasonable effort to find an  
16 alternative work assignment for any employee who participated  
17 in the election and is unable or unwilling to comply with the  
18 alternative schedule hours established as the result of that  
19 election.

20 (3) An employer shall be permitted to provide a work schedule  
21 not to exceed eight hours in a workday to accommodate any  
22 employee who was hired after the date of the election and who is  
23 unable to work the alternative schedule established as the result  
24 of that election. The employer may voluntarily accommodate as  
25 many employees as it is able and willing to accommodate.

26 (4) An employer shall explore any available reasonable  
27 alternative means of accommodating the religious belief or  
28 observance of an affected employee that conflicts with an  
29 adopted alternative workweek schedule, in the manner provided  
30 by subdivision (l) of Section 12940 of the Government Code.

31 (f) Twelve months from the date the alternative workweek  
32 schedule is adopted, a majority of the affected employees may  
33 petition for a new secret ballot election to be held to repeal the  
34 alternative workweek schedule. The alternative workweek  
35 schedule shall be repealed if the petition to repeal the alternative  
36 schedule is approved by at least two-thirds of the affected  
37 employees in the secret ballot election. The employer shall take  
38 all actions necessary to effectuate the repeal of the alternative  
39 workweek schedule within 60 days of the election, except that the  
40 Division of Labor Standards Enforcement may grant the

1 *employer an extension on that 60 days if the employer makes a*  
2 *satisfactory showing to the division that compliance within the 60*  
3 *days would cause the employer undue hardship.*

4 *(g) For purposes of this section, "affected employee" includes,*  
5 *but is not limited to, any employee in a readily identifiable work*  
6 *unit such as a division, department, job classification, shift,*  
7 *separate physical location, or a recognized subdivision of any of*  
8 *these work units. For purposes of this subdivision, a work unit*  
9 *may consist of an individual employee.*

10 *(h) An employer shall not reduce an employee's regular rate*  
11 *of hourly pay as a result of the adoption, repeal, or nullification*  
12 *of an alternative workweek schedule.*

13 *(i) The results of any election conducted pursuant to this*  
14 *section shall be reported by an employer to the Division of Labor*  
15 *Statistics and Research within 30 days after the results are final.*

16 *(j) Any type of alternative workweek schedule that is*  
17 *authorized by this code and that was in effect on January 1,*  
18 *2000, may be repealed by the affected employees pursuant to this*  
19 *section. This subdivision does not apply to exemptions authorized*  
20 *pursuant to Section 515.*

21 *(k) Notwithstanding any other provision of law, an employer*  
22 *who adopts an alternative workweek schedule pursuant to this*  
23 *section shall not be in violation of any overtime provision of this*  
24 *code and shall be exempt from Wage Order Number 1, or any*  
25 *other applicable wage order, of the Industrial Welfare*  
26 *Commission.*

27 *SEC. 3. Section 513 of the Labor Code is amended to read:*

28 *513. If an employer approves a written request of an*  
29 *employee to make up worktime that is or would be lost as a result*  
30 *of a personal obligation of the employee, the hours of that*  
31 *makeup worktime, if performed in the same workweek in which*  
32 *the worktime was lost, may shall not be counted towards*  
33 *computing the total number of hours worked in a day for*  
34 *purposes of the overtime requirements specified in Section 510*  
35 *or 511, 511, or 511.5, except for hours in excess of 11 hours of*  
36 *work in one day or 40 hours in one workweek with respect to*  
37 *Sections 510 and 511, and hours in excess of 12 hours of work in*  
38 *one day or 40 hours in one workweek with respect to Section*  
39 *511.5. An employee shall provide a signed written request for*  
40 *each occasion that the employee makes a request to make up*

1 work time pursuant to this section. An employer is prohibited  
2 from encouraging or otherwise soliciting an employee to request  
3 the employer's approval to take personal time off and make up  
4 the work hours within the same week pursuant to this section.

5 *SEC. 4. Section 514 of the Labor Code is amended to read:*

6 514. Sections 510 ~~and 511~~, 511, and 511.5 do not apply to an  
7 employee covered by a valid collective bargaining agreement if  
8 the agreement expressly provides for the wages, hours of work,  
9 and working conditions of the employees, and if the agreement  
10 provides premium wage rates for all overtime hours worked and  
11 a regular hourly rate of pay for those employees of not less than  
12 30 percent more than the state minimum wage.

13 *SEC. 5. Section 515 of the Labor Code is amended to read:*

14 515. (a) The Industrial Welfare Commission may establish  
15 exemptions from the requirement that an overtime rate of  
16 compensation be paid pursuant to Sections 510 ~~and 511~~, 511, and  
17 511.5 for executive, administrative, and professional employees,  
18 provided that the employee is primarily engaged in the duties that  
19 meet the test of the exemption, customarily and regularly  
20 exercises discretion and independent judgment in performing  
21 those duties, and earns a monthly salary equivalent to no less  
22 than two times the state minimum wage for full-time  
23 employment. The commission shall conduct a review of the  
24 duties that meet the test of the exemption. The commission may,  
25 based upon this review, convene a public hearing to adopt or  
26 modify regulations at that hearing pertaining to duties that meet  
27 the test of the exemption without convening wage boards. Any  
28 hearing conducted pursuant to this subdivision shall be  
29 concluded not later than July 1, 2000.

30 ~~(b) (1) The commission may establish additional exemptions~~  
31 ~~to hours of work requirements under this division where it finds~~  
32 ~~that hours or conditions of labor may be prejudicial to the health~~  
33 ~~or welfare of employees in any occupation, trade, or industry.~~  
34 ~~This paragraph shall become inoperative on January 1, 2005.~~

35 ~~(2) Except as otherwise provided in this section and in~~  
36 ~~subdivision (g) of Section 511, nothing in this section requires~~  
37 ~~the commission to alter any exemption from provisions~~  
38 ~~regulating hours of work that was contained in any valid wage~~  
39 ~~order in effect in 1997. Except as otherwise provided in this~~  
40 ~~division, the commission may review, retain, or eliminate any~~

1 exemption from provisions regulating hours of work that was  
2 contained in any valid wage order in effect in 1997.

3 (c) For the purposes of this section, “full-time employment”  
4 means employment in which an employee is employed for 40  
5 hours per week.

6 (d) For the purpose of computing the overtime rate of  
7 compensation required to be paid to a nonexempt full-time  
8 salaried employee, the employee’s regular hourly rate shall be  
9  $\frac{1}{40}$ th of the employee’s weekly salary.

10 (e) For the purposes of this section, “primarily” means more  
11 than one-half of the employee’s worktime.

12 (f) (1) In addition to the requirements of subdivision (a),  
13 registered nurses employed to engage in the practice of nursing  
14 shall not be exempted from coverage under any part of the orders  
15 of the Industrial Welfare Commission, unless they individually  
16 meet the criteria for exemptions established for executive or  
17 administrative employees.

18 (2) This subdivision does not apply to any of the following:

19 (A) A certified nurse midwife who is primarily engaged in  
20 performing duties for which certification is required pursuant to  
21 Article 2.5 (commencing with Section 2746) of Chapter 6 of  
22 Division 2 of the Business and Professions Code.

23 (B) A certified nurse anesthetist who is primarily engaged in  
24 performing duties for which certification is required pursuant to  
25 Article 7 (commencing with Section 2825) of Chapter 6 of  
26 Division 2 of the Business and Professions Code.

27 (C) A certified nurse practitioner who is primarily engaged in  
28 performing duties for which certification is required pursuant to  
29 Article 8 (commencing with Section 2834) of Chapter 6 of  
30 Division 2 of the Business and Professions Code.

31 (D) Nothing in this paragraph shall exempt the occupations set  
32 forth in subparagraphs (A), (B), and (C) from meeting the  
33 requirements of subdivision (a).

34 *SEC. 6. No reimbursement is required by this act pursuant to*  
35 *Section 6 of Article XIII B of the California Constitution because*  
36 *the only costs that may be incurred by a local agency or school*  
37 *district will be incurred because this act creates a new crime or*  
38 *infraction, eliminates a crime or infraction, or changes the*  
39 *penalty for a crime or infraction, within the meaning of Section*  
40 *17556 of the Government Code, or changes the definition of a*

1 *crime within the meaning of Section 6 of Article XIII B of the*  
2 *California Constitution.*

3 ~~511.5. Notwithstanding Section 511, an individual employee~~  
4 ~~shall not be required to adopt an alternative workweek and may,~~  
5 ~~with the consent of his or her employer, work up to 12 hours per~~  
6 ~~day within a 40-hour workweek, provided that the employee is~~  
7 ~~guaranteed a base salary.~~

8

9

10 CORRECTIONS:

11 Digest – Lines 7, 8, 9, 10, and 11.

12 Text – Pages 1, 5, and 7.

13

O